IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3957 of 2007()

CC.61/2000 of J.M.F.C.,KUNNAMKULAM
CRIME NO.29/96 OF KUNNAMKULAM POLICE STATION

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: PETITIONER/ACCUSED 2,4, & 5

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1. M.M.VELAYUDHAN,S/O.MAKKOTHA,MUDATT HOUSE
PAZHANJI VILLAGE,AYINOOR DESOM,THRISSUR DISTRICT.

2. M.M.SUNOJ,S/O.MADHAVAN,
MUTHIRAMPARAMBATH HOUSE,
PAZHANJI VILLAGE,AYINOOR DESOM,
THRISSUR DISTRICT.

3. SREENIVASAN,S/O.KOCHUNNI,MANAYODATHAYIL
HOUSE,PAZHANJI VILLAGE,AYINOOR DESOM,
THRISSUR DISTRICT.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,REP BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3957 of 2007

Dated this the 2nd day of July, 2007

ORDER

Application for anticipatory bail. Petitioners along with others were arrayed as accused in a prosecution for offence punishable, inter alia, under Sections 323 and 324 r/w 149 I.P.C. The petitioners were not available for trial. Trial against the co-accused has proceeded. The defacto complainant had settled the disputes with the accused persons. The co-accused, who faced trial have been acquitted. After their acquittal, the case against the petitioners have been re-registered. Non bailable warrants issued by the learned Magistrate are chasing them. The petitioners, in these circumstances, have come to this Court. According to them, they are innocent. Their absence earlier was not wilful. They are prepared to surrender before the learned Magistrate and co-operate with the further progress of the case. The disputes have been settled. The offences are compoundable. The petitioners apprehend that if they surrender before the learned Magistrate and apply for bail and also prays for acceptance of composition, the learned Magistrate may not considersuch requests on merits, in accordance with law and expeditiously. It is, in these circumstances, that the petitioners have come to this Court with a prayer to issue direction under Section 438 and/or 482 Cr.P.C.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously- on the date of surrender itself.

5. If the petitioners have a case that the defacto complainant has settled the disputes and has compounded the offences, it will certainly be open to the parties to make that request - for composition also before the learned Magistrate. In that event, the learned Magistrate must certainly consider whether charges are liable to be framed for any non compoundable offences. If charges are liable to be framed only for compoundable offences, then the petitioners' application for composition must also be considered by the learned Magistrate expeditiously.

6. Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-